

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:08CV16-1-MU

LYNN ALAN PALMER,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
 _____)

O R D E R

THIS MATTER comes before the Court upon the Respondent's Motion for Summary Judgment, filed March 19, 2008.

On March 24, 2008, this Court sent the Petitioner an Order in compliance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975). In this Order, the Court notified the Petitioner that the Respondent had filed a Motion for Summary Judgment and that if the Petitioner failed to respond to this motion within thirty days, the Court might grant the Motion for Summary Judgment. Petitioner's deadline for filing a response has expired and Petitioner has failed to respond to the Respondent's Motion.

The Court has carefully reviewed the well-reasoned, thorough and unopposed Motion for Summary Judgment filed by the Respondent and finds that Respondent is entitled to a dismissal. More specifically, this Court finds that Petitioner's Motion to Vacate is untimely. Although Petitioner asserts that he is actually innocent, he does not provide any reason as to why he could not have timely filed his Motion to Vacate. In addition, the Court notes that Petitioner is merely

rearguing evidence presented at trial or existing at the time of trial. Petitioner does not reference and new evidence that was unavailable at trial. Consequently, this Court need not decide if actual innocence is an exception to the Antiterrorism and Effective Death Penalty Act's limitation period. For these reasons and those set forth in Respondent's well-reasoned Motion for Summary Judgment, this Court will grant Respondent's motion.

THEREFORE, IT IS HEREBY ORDERED that:

1. Respondent's Motion for Summary Judgment is **GRANTED**; and
2. Petitioner's Motion to Vacate is **DISMISSED**.

Signed: May 5, 2008

A handwritten signature in black ink, appearing to read "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

